

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte QIANG SHEN
and
WITOLD A. KRZYMIEN

Appeal No. 1999-2826
Application No. 08/696,247

ON BRIEF

Before THOMAS, RUGGIERO, and DIXON, Administrative Patent Judges.
RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the final rejection of claims 1-12, which are all of the claims pending in the present application. An amendment filed December 11, 1998, after final rejection, which amended claims 1 and 7, was approved for entry by the Examiner.

The invention relates to a wireless terminal, such as a mobile station, used in a telecommunications system in which control bits are sent from a base station to the wireless terminal to control the transmitted power of the wireless terminal. A predictor is utilized at the wireless terminal to

output a prediction of future values of the accumulation of received power control bits received at the wireless terminal. The output power of the wireless terminal is adjusted according to a continuous or discontinuous function in response to the difference of two successive predictor outputs.

Claim 1 is illustrative of the invention and reads as follows:

1. A wireless terminal for use in a communications system using a power control bit channel, comprising:

a receiver tunable to the power control bit channel, the receiver having, in operation, a received signal as output, wherein the received signal comprises power control bits;

an accumulator for accumulating the output of the receiver to produce an accumulated signal;

a predictor having as input the accumulated signal and output a prediction of future values of the accumulated signal;

a power controller having as input the output from the predictor and having as output a signal whose power is a function of the predictor output; and

a transmitter for transmitting signals having a power that is a function of the predictor output.

The Examiner relies on the following prior art:

Paul	4,177,430	Dec. 04, 1979
Havel et al. (Havel)	4,811,421	Mar. 07, 1989
Reed et al. (Reed)	5,574,984	Nov. 12, 1996
		(filed Dec. 13, 1994)

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Claims 1-12 stand finally rejected under 35 U.S.C. § 103(a). As evidence of obviousness, the Examiner offers Havel in view of Reed with respect to claims 1-5 and 7-11, and adds Paul to the basic combination with respect to claims 6 and 12.

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Brief (Paper No. 13) and Answer (Paper No. 14) for their respective details.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the Examiner, and the evidence of obviousness relied upon by the Examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellants' arguments set forth in the Brief along with the Examiner's rationale in support of the rejections and arguments in rebuttal set forth in the Examiner's Answer.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the obviousness of the invention as recited in claims 1-12. Accordingly, we reverse.

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In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073-74, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion, or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the Examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

With respect to the obviousness rejection of claims 1 and 7, the sole independent claims on appeal, based on the combination of Havel and Reed, Appellants assert the Examiner's failure to establish a prima facie case of obviousness since all of the claimed limitations are not taught or suggested by the applied prior art references. In particular, Appellants contend:

In the primary reference, Havel, the received power is measured (circuit 5 in Fig. 1). In Havel, there is no power control bit channel, the receiver is not tuned to a power control bit channel, no power control bits are accumulated and no prediction is made from the accumulated power control bits. [Brief, page 6.]

After reviewing the Havel reference in light of the arguments of record, we are in agreement with Appellants' position as stated in the Brief. We do not dispute the Examiner's assertion of similarities between Havel's disclosure and Appellants' claimed invention, i.e., both use predicted power parameter values to dynamically adjust the power level output of a mobile station. In focusing on these similarities, however, the Examiner has, in our view, ignored the clear distinctions between Havel and the invention as set forth in the appealed claims.

In contrast to the system of Havel which operates on a received frequency signal to develop a power measurement signal

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which in turn is processed to produce an estimated power signal, Appellants' claimed invention operates on received power control bits which are accumulated and processed to produce a prediction of future values of the accumulated signal. We find no indication from the Examiner as to how and in what manner the disclosure of Havel would be modified to arrive at Appellants' claimed invention. In order for us to sustain the Examiner's rejection under 35 U.S.C. § 103(a), we would need to resort to speculation or unfounded assumptions or rationales to supply deficiencies in the factual basis of the rejection before us. In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968), reh'g denied, 390 U.S. 1000 (1968).

We have also reviewed the Reed and Paul references applied by the Examiner to provide a teaching of power averaging and the use of the Widrow least mean square algorithm, respectively. We find nothing, however, in either of these references that would overcome the innate deficiencies of Havel discussed supra.

In view of the above discussion, it is our view that, since all of the limitations of the appealed claims are not taught or suggested by the prior art, the Examiner has not established a prima facie case of obviousness. Accordingly, the 35 U.S.C.

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§ 103(a) rejection of independent claims 1 and 7, as well as
claims 2-6 and 8-12 dependent thereon, cannot be sustained.
Therefore, the decision of the Examiner rejecting claims 1-12 is
reversed.

REVERSED

JAMES D. THOMAS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOSEPH F. RUGGIERO)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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JFR:hh

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